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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,347	08/03/2001	Kelso G. Sims	733.00067	7293

7590

11/19/2002

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EXAMINER

NASH, BRIAN D

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 11/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/922,347

Applicant(s)

SIMS ET AL.

Examiner

Brian D Nash

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: .

## **DETAILED ACTION**

### ***Drawings***

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4, 7, 11-12, and 19-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 4 it is unclear what is meant by “joined”, i.e. are elements fastened together or added to?

In claims 7, 11, and 19 phraseology “of the order of” is indefinite to the extent the angle is less than or greater than a specific value.

In claim 12 it is unclear if claimed features relate to the tool mount or a tool held by the tool mount?

In claims 20-21 it is unclear what is meant by comprising a “vertical ball and screw” or a “scissors jack” on the base, i.e. no structure has been disclosed.

Art Unit: 3721

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2, 9, 12, and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by US 3,360,176 to Gehl et al. Gehl discloses the same invention including a tool carrier (11) having a base (20,41) engaging the sub floor and a spacer (35) engaging the work piece; having a handle (18) extending upwardly from the tool carrier (11) at an angle.

Regarding structural limitations of a tool held in place by the tool mount, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3-6, 8, 15, and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,360,176 to Gehl et al. in view of US 6,269,996 to McAllister. As discussed above in paragraph 5 of this office action, Gehl discloses the invention substantially as claimed except for a center plate fastened to side plates, the tool carrier clamped in position and having a lateral

Art Unit: 3721

component of movement with respect to the base. However, McAllister teaches a center plate (22) supported by side plates (28) and tool carrier (26) that is adjustable and having vertical and lateral components of movement (see McAllister, column 4, lines 42-55) and also (see McAllister, column 4, line 60 to column 5, line 11) wherein lateral movement of a spacer (36) relative to the floor surface (20) is disclosed.

In view of McAllister, it would have been obvious to one having ordinary skill in the art to have provided the adjustability of vertical and lateral movement and a spacer for engagement with the work piece for the purposes of better aligning the fastening tool with respect to the work piece.

#### *Allowable Subject Matter*

8. Claims 10, 13-14, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 7 and 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### *Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Vrana, Hansen, Feesenmayr et al., Bergler, Boulay, and Dettloff et al. are cited to show related methods.

Art Unit: 3721

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Nash whose telephone number is (703) 305-4959. The examiner can normally be reached on Monday – Thursday from 8 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached at (703) 308-2187. The fax number for this Group is (703) 305 -3579.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Brian D. Nash

14 November 2002

A handwritten signature in black ink, appearing to read 'Rinaldi I. Rada', with a long horizontal line extending to the right.

Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700